

Opening Statement of the Honorable Fred Upton
Markup of H.R. 2042, The Ratepayer Protection Act, and H.R. 2045, the Targeting Rogue
and Opaque Letters Act of 2015 (TROL Act)
April 28, 2015

(As Prepared for Delivery)

Our ongoing work to protect jobs, consumers, and job creators continues as we mark up two important bills.

First, we will consider the Ratepayer Protection Act, a bill authored by Energy and Power Subcommittee Chairman Ed Whitfield and Rep. Morgan Griffith that does exactly what the title says – protect electric ratepayers from the potential rate increases and reliability risks of the EPA's Clean Power Plan for existing power plants.

We have held five hearings on the proposed rule since it was announced, and we have heard from many states and experts about the legality and feasibility surrounding EPA's unprecedented power grab to control state decisions on electricity generation, transmission, distribution, and use. It is far from clear that the agency has the authority to do all of this – even the president's mentor at Harvard Law, Professor Laurence Tribe, equates EPA's move to "burning the Constitution." Over half the states have weighed in with serious concerns about the legality of EPA's agenda.

Yet the proposed rule's deadlines are so accelerated that states will have to take potentially costly steps before judicial review of the rule is even complete. Decisions to commit billions of dollars would likely have to be made about a rule that many believe will not survive court challenge. The Ratepayer Protection Act simply and sensibly requires that judicial review of the initial legal challenges to the rule be completed before states are compelled to comply with its unprecedented provisions.

Even if the proposed rule or some modified version does survive judicial review, it still poses a real risk to ratepayers of all kinds, from cash-strapped families struggling to pay their electric bills to job-creating businesses both large and small. Some forecasts indicate that a majority of states will see annual double-digit rate increases as a result. For Michigan, rates are estimated to increase as much as 15 percent. Sadly, it's low-income families and those on fixed incomes who get hit the hardest when the electric bills go up.

The Ratepayer Protection Act has a simple answer to the potential for rate shock and reliability concerns that states, the North American Electric Reliability Corporation and others have warned about. It ensures that no state could be forced to implement a state or federal plan that the governor found to significantly threaten electricity affordability or reliability.

As our fragile economic recovery keeps sputtering along, the last thing families and job creating businesses need is higher electric bills. The Ratepayer Protection Act provides reasonable safeguards against the risks to ratepayers of EPA's Clean Power Plan.

The second bill we will consider is the TROL Act, authored by Commerce, Manufacturing, and Trade Subcommittee Chairman Dr. Burgess, which is designed to stop abusive patent trolls from targeting America's main street. This bill is a continuation of our work from last Congress, and I thank all stakeholders who have worked to get us where we are today. Although the negotiations were not easy, the TROL Act addresses the problem in a way that preserves patent values and the constitutional rights of patent holders while making it harder for trolls to use deception and intimidation to extract a toll from their victims.

This bill seeks to protect the ability of small businesses in Michigan and across the country to innovate. When a troll sends abusive letters, we provide tools to identify those letters and provide better enforcement.

There are a few elements to this legislation that are vital to address the abusive demand letter problem. First, the bill requires key disclosures that have been requested by recipients to help identify when a letter is likely to be legitimate. The bill also grants civil penalty authority where none exists today. Where such authority is given we must be careful to protect innovators so that the Federal Trade Commission cannot obtain monetary penalties resulting from an honest mistake. Nor should we punish good-faith communications between entities with large patent portfolios.

The bill also preserves state consumer protection laws of general applicability. Fraudulent or deceptive practices should be enforceable. The bill does the same thing for the FTC. Beyond that, we don't think constitutionally granted intellectual property rights should face different state requirements.

This legislation provides a workable and effective solution.

The two bills before the committee, the Ratepayer Protection Act and the TROL Act, are necessary solutions to protect consumers and businesses from unfair and harmful regulations and practices. We will continue to put jobs first. We will continue working to lower Americans' electric bills and to ensure the lights stay on. I urge my colleagues to join me in voting yes.

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